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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,971	10/20/2004	Johannes Arnoldus Cornelis Bernsen	NL 020325	8924
24737	7590	11/16/2007		
PHILIPS INTELLECTUAL PROPERTY & STANDARDS			EXAMINER	
P.O. BOX 3001			HARVEY, DAVID E	
BRIARCLIFF MANOR, NY 10510			ART UNIT	PAPER NUMBER
			2621	
		MAIL DATE	DELIVERY MODE	
		11/16/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/511,971	BERNSEN ET AL.
	Examiner	Art Unit
	DAVID E. HARVEY	2621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 August 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-11 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 October 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 8/1/2005 & 10/20/2004
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

1. **Cited Prior Art:**

- A) U.S. Patent #5,363,354 to Tabuchi has been cited because it evidences that it was known in the art to have "searched" information that is recorded on a disc by sequentially over "skipping" predetermined number of tracks of information, wherein the number predetermined number of tracks that are skipped is proportional to the volume of the recorded information being searched [note lines 44-56 of column 7].
- B) U.S. Patent #6,377,518 to Auwens et al. has been cited because it describes a system (e.g., figure 2) for formatting a DVD during recording, wherein the DVD (figure 1a) is formatted to have an allotted free area (@ 12) of an allotted size for accommodating required control information (e.g. entry data), wherein the allotted size of the free area is set to be smaller than might required to store all of the generated control information be needed and, wherein when the generated control information exceeds the allotted space said control information is restricted/modified to be of a lesser volume [e.g., lines 1-57 of column 12].¹
- C) U.S. Patent #7,159,244 to Matsushima et al. has been cited because it describes a system in which the amount of control information generated for each record is reduced by dividing said records into smaller records [note lines 31-59 of column 9].
- D) U.S. Patent #5,594,709 to Nagano et al. has been cited because it describes a system in which the index points of an entry table are calculated as a fraction of the information recording time [note lines 54-67 of column 15].

¹ In contrast to applicant's acknowledged "prior art" which simply sets the free area to be sufficiently large to accommodate any volume of control data (e.g., lines 10-15 on page 2 of the instant specification).

2. Claims 1-9 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- A) In claim 1, lines 8-9, the recitation "*if* the size...second interval" is confusing and indefinite because it is unclear from the "if" terminology whether or not the recited method actually requires the recited "increasing step" that is set forth within this limitation. Indeed, if the maximum size is set large enough, it would never be exceeded. Clarification is needed.
- B) In claim 1, lines 10-12, the recitation "*if* the size...second predetermined interval" is confusing and indefinite because it is unclear from the "if" terminology whether or not the recited method actually requires the recited "determining step" that is set forth within this limitation. Indeed, if the maximum size is large enough, it would never be exceeded. Clarification is needed.

3. Preface to the Rejections :

Claim 1 recites:

"1. A method of defining entry points in an incoming data stream, the method comprising the steps of:

(a) generating an entry point table;

(b) defining a first interval;

(c) defining entry points in the incoming data stream, in which the entry points are defined at an equal distance from each other, equal to the first interval;

(d) storing the defined entry points in the entry point table;

(e) if the size of the entry point table exceeds a predetermined maximum size, increasing the first interval between the entry points to a second interval; and,

(f) if the size of the entry point table exceeds the predetermined maximum size, determining new entry points having a mutual distance which is equal to that of the second predetermined interval." (emphasis added).

Given the problems noted in paragraph 2 of this Office action, the examiner takes the position that conditional "if..." expressions of steps (e) and (f) mean that claim 1 is inclusive of a method that does not the "increasing" and "determining" contained therein if/when the size of the entry point table is not, or cannot be, exceeded. When the size of the entry point table does not (or cannot) exceed the predetermined maximum size, claim 1 requires a method of defining entry points in an incoming data stream which only comprises the steps of:

(a) generating an entry point table;

(b) defining a first interval;

(c) defining entry points in the incoming data stream, in which the entry points are defined at an equal distance from each other, equal to the first interval; and

(d) storing the defined entry points in the entry point table.

Thus, if/when the maximum size is not (or cannot) be exceeded, it is maintained that claim 1 is clearly anticipated by the acknowledged "prior art" described by applicant in lines 10-28 on page 1 and lines 1-15 on page 2 of the instant disclosure; i.e., it is maintained that the recited method reverts to an operation that is identical to the operation of applicant's disclosed "prior art".

Here, the examiner notes that claim 1 would avoid the acknowledged "prior art," and would overcome the section 112 problems cited above, if the term "if" in steps (e) and (f) were changed to read --when--; i.e., thereby requiring the maximum size to be exceeded at least some of the time.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by applicant's acknowledgment of "prior art."**

See paragraph 3 of this Office action.

6. **Claims 10 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by applicant's acknowledgment of "prior art" for the same reasons that were explained above with respect to claim 1.**

7. **Claims 2-5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by applicant's acknowledgment of "prior art" for the same reasons that were explained above with respect to claim 1.**

8. **Claims 8 and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by applicant's acknowledgment of "prior art" for the same reasons that were explained above with respect to claim 1.**

The data stream produced by the acknowledged prior art was for recording on, and playback from, a record carrier (i.e., a DVD).

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's acknowledgment of "prior art."

It is maintained that the limitations of claim 1 are clearly anticipated by applicant's acknowledged prior art for the reasons that were set forth above with respect to the rejection of claim 1.

Claim 9 differs from the acknowledged prior art only in that claim 9 recited a record carrier comprising computer-readable and executable instructions which enable a computer to perform the method of claim 1.

It is maintained that it would have been obvious to have provided a record carrier containing instructions for causing a computer to operate in accordance with the acknowledged prior art in view that such software implementations were known to have been advantageous in that they permitted the use of a general purpose computer and, thereby, avoided the need/cost of dedicated circuitry.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID E. HARVEY whose telephone number is (571) 272-7345. The examiner can normally be reached on M-F from 6:00AM to 3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller, can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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DAVID E HARVEY
Primary Examiner
Art Unit 2621